

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK, NATIONAL ASSOCIATION,
in its capacity as Trustee, JOSHUA N.
TERRY, AND ACIS CAPITAL
MANAGEMENT, L.P.,

Plaintiffs,

v.

THE CHARITABLE DONOR ADVISED
FUND, L.P., CLO HOLDCO LTD., AND
NEXPOINT STRATEGIC OPPORTUNIT
IES FUND,

Defendants.

No. 1:21-cv-11059 (GHW-JLC)

**DECLARATION OF MARK PATRICK IN SUPPORT OF
DAF/CLOH'S MOTION TO DISMISS**

1. My name is Mark Patrick. I am over twenty-one (21) years of age. I am of sound mind and I am competent to make this declaration. I have personal knowledge of the matters stated in this declaration, and this declaration is made based upon my personal knowledge unless expressly stated otherwise.

2. Since approximately March 24, 2021, I have been the Managing Member of Charitable DAF GP, LLC, a Delaware limited liability company ('DAF GP'). In connection with my duties as DAF GP's Managing Member, I am generally familiar with the ownership and organizational structure of DAF GP and the other entities described in this declaration. DAF GP has been the general partner of Charitable DAF Fund, L.P. a/k/a The Charitable Donor Advised Fund, L.P. ('DAF'), a Cayman Islands limited partnership, and a defendant in the above-captioned lawsuit, continuously from at least March 24,

2021, through the present. DAF GP, as DAF's general partner, has controlled DAF continuously since at least March 24, 2021, through the present.

3. Since approximately March 24, 2021, I have been the Director of Charitable DAF HoldCo, Ltd., a Cayman Islands limited company ('DAF Ltd'). DAF Ltd is the sole (100%) limited partner of DAF.

4. DAF is the 100% owner of CLO HoldCo, Ltd., a Cayman Islands limited company ('CLOH'), who is also a defendant in the above-captioned lawsuit. As the 100% owner of CLOH, DAF has controlled CLOH continuously since at least March 24, 2021.

5. Since at least March 24, 2021, as the Managing Member of DAF GP and the Director of DAF Ltd, I have continuously had exclusive control to make operational decisions for DAF GP, DAF Ltd, and DAF, including (but not limited to) the decision of whether to cause DAF to file suit upon claims it may have and/or cause DAF to cause its subsidiary, CLOH, to file suit upon claims it may have.

6. None of the following entities owns or controls NexPoint Strategic Opportunities Fund (a defendant in the above-captioned lawsuit): DAF GP, DAF Ltd, DAF, and CLOH.

7. In the course of my roles as Managing Member of DAF GP and Director of DAF Ltd, I have reviewed Redemption Reports, dated June 23, 2021, of ACIS CLO 2014-4, Ltd., ACIS CLO 2014-5, Ltd., and ACIS CLO 2015-6, Ltd., true and correct copies of which are attached to this declaration as Exhibits A, B, and C, respectively (the 'Redemption Reports'). The Redemption Reports were made available by U.S. Bank National

Association in connection with indentures issued by ACIS CLO 2014-4, Ltd. ('ACIS 4'), ACIS CLO 2014-5, Ltd. ('ACIS 5'), and ACIS CLO 2015-6, Ltd. ('ACIS 6') (collectively, 'ACIS CLOs').

8. Exhibit A to this declaration reflects that, as of June 23, 2021, the account identified as 'Collection Account – Principal' had a cash balance of \$100,043,785.36, and 'Available Redemption Monies' amounted to \$95,242,833.01. It also reflects that on June 24, 2021, the entire balance of the Available Redemption Monies would be paid to satisfy the Secured Notes and to cover administrative expenses. Deducting the Available Redemption Monies from the 'Collection Account – Principal' balance reveals that ACIS 4 had a reserve of approximately \$4,800,952 from its principal collection account after the June 24, 2021, Payment Date.

9. Exhibit B to this declaration reflects that, as of June 23, 2021, the account identified as 'Collection – Principal' had a cash balance of \$150,390,383.46, and 'Available Redemption Monies' amounted to \$138,890,383.46. It also reflects that on June 24, 2021, the entire balance of the Available Redemption Monies would be paid to satisfy the Secured Notes and to cover administrative expenses. Deducting the Available Redemption Monies from the 'Collection – Principal' balance reveals that ACIS 5 had a reserve of \$11,500,000 from its principal collection account after the June 24, 2021, Payment Date.

10. Exhibit C to this declaration reflects that, as of June 23, 2021, the account identified as the 'Collection' account had a cash balance of \$167,087,388.25, the balance of interest in the 'Collection' account was \$812,798.37, and 'Available Redemption Monies' amounted to \$152,084,496.92. It also reflects that on June 24, 2021, the entire balance of the 'Available Redemption Monies' would be paid to satisfy the Secured Notes and to cover administrative expenses. Deducting interest and the 'Available Redemption Monies' from the 'Collection' account balance reveals that ACIS 6 had a reserve of \$14,190,084.96 from its principal collection account after the June 24, 2021, Payment Date.

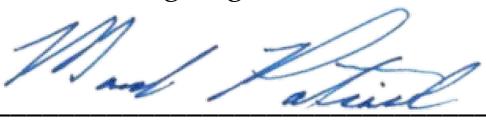
11. Based on the balances of cash identified in paragraphs 8 – 10 of this declaration, the Acis CLOs held reserves (after the June 24, 2021, Payment Date) amounting to in excess of \$30 million. Upon information and belief and according to the allegations in Plaintiffs' Amended Complaint (Doc 15), which I have read in its entirety, it is my understanding that Plaintiffs are withholding in excess of \$30 million from distribution to the Holders of Subordinated Notes allegedly to create a reserve of funds for alleged indemnity obligations of ACIS 4, ACIS 5, and ACIS 6, respectively.

12. Exhibits A, B, and C to this declaration also reflect that after redeeming and paying all requisite distributions to the Holders of Secured Notes, the ACIS CLOs held substantial unliquidated assets and that the ACIS CLOs' equity in those assets, collectively, exceeded \$21.5 million.

13. In the course of my roles as Managing Member of DAF GP and Director of DAF Ltd, I am a custodian of the records of CLOH. Attached hereto are approximately 1,118 pages of records from CLOH ('Records'). These Records are kept by CLOH in the regular course of business, integrated into CLOH's business records in the regular course of business, and relied upon by CLOH in its day-to-day operations. The Records attached hereto are the original or exact duplicates of the original records integrated into CLOH's business records. Among the 1,118 pages of Records are 33 pages of records defined, above, as the Redemption Reports and marked as Exhibits A, B, and C to this declaration. Also included among the 1,118 pages of attached Records are 1,085 pages of records marked as Exhibits D, E, and F to this declaration (the "Indentures"). The Indentures attached as Exhibits D, E, and F are issued by ACIS 4, ACIS 5, and ACIS 6, respectively. On information and belief, these Indentures are the indentures forming the basis of Plaintiffs' claims in the above-captioned lawsuit.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 18, 2022


Mark Patrick